

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

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|----------------------|---|---------------------------|
| Ray Anthony Shepard, |) | |
| |) | |
| Petitioner, |) | C.A. No. 6:11-cv-1457-MBS |
| |) | |
| vs. |) | |
| |) | ORDER AND OPINION |
| Anthony J. Padula, |) | |
| |) | |
| Respondent. |) | |
| |) | |

Petitioner Ray Anthony Shepard is a prisoner in custody of the South Carolina Department of Corrections. On June 16, 2011, Petitioner, proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(c), D.S.C., the action was referred to United States Magistrate Judge Paige J. Gossett for review. The Magistrate Judge ordered Respondent to file a return by August 25, 2011. ECF No. 9. On August 25, 2011, Respondent filed a motion for an extension of time to file return. ECF No. 15. Respondent's motion was granted and the Magistrate Judge ordered that Respondent file return by September 26, 2011. ECF No. 17. On August 31, 2011, Petitioner filed a motion for entry of default. ECF No. 20.

On September 22, 2011, the Magistrate Judge issued a Report in which she addressed Petitioner's motion for entry of default. The Magistrate Judge found that Respondent had not been untimely, because he had been granted an extension until September 26, 2011 to file a return. Accordingly, the Magistrate Judge recommended that Petitioner's motion for entry of default be denied. Plaintiff filed objections to the Report of the Magistrate Judge on October 6, 2011. ECF No. 30.

The Magistrate Judge makes only a recommendation to this court. The recommendation

has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Magistrate Judge's Report to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

Petitioner objects to the Report of the Magistrate Judge on the ground that Respondent has failed to file a return in a timely fashion. The basis for Petitioner's objection is that Respondent has sought two extensions of time for filing the return, causing delay.

Pursuant to Fed. R. Civ. P. 6(b)(1), the court may, for good cause, extend the time when an act must be done with or without motion if the court acts, or if a request is made, before the currently controlling time limit expires. Respondent was initially required to file a return by August 25, 2011. However, the Magistrate Judge granted him an extension until September 26, 2011. Petitioner's objection is therefore without merit.

CONCLUSION

After a thorough review of the Report and Recommendation, Petitioner's Objections, the record, and the applicable law, the court adopts the Report and Recommendation of the Magistrate Judge and incorporates it herein by reference. Petitioner's motion for entry of default is DENIED. The matter is recommitted to the Magistrate Judge for additional review and a Report and Recommendation.

IT IS SO ORDERED.

s/ Margaret B. Seymour
The Honorable Margaret B. Seymour
United States District Judge

December 19, 2011
Columbia, South Carolina